THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 17210 OF 2002

Date: 25.07.2007

Between:

M/s. Krishna Bhargava Wines, rep., by its Licensee Mr. Kalari Chiranjeevulu, S/o Sri Ramulu, Marripalem village, Nagayalanka Mandal, Krishna District.

... Petitioner

and

The Government of A.P. rep., by its Secretary, Revenue (Ex.II) Department, Secretariat, Hyderabad and two others.

... Respondents.

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ORDER:

Questioning the action of the respondents in refusing to return the proportionate license fee for the period from 01.06.2001 to 08.08.2001 as arbitrary and illegal, the present writ petition is filed.

The petitioner participated in the draw for allotment of IL 24 licenses conducted on 11.05.2001 and was the successful allottee. He selected the IL 24 retail shop at Bhavadevarapalli. However in the meanwhile W.P. No. 9241 of 2001 was filed challenging the notification dated 02.05.2001 and this Court granted interim stay. Eventually the writ petition came to be dismissed on 04.07.2001. Meanwhile the villagers of Bhavadevarapalli, including the sarpanch objected to the establishment of the IL 24 retail shop in their village necessitating the petitioner making a request for shifting his retail shop to Marripalem. The matter was referred to the Commissioner by the third respondent vide proceedings dated 27.07.2001 and the second respondent, vide proceedings dated 07.08.2001, accorded permission to establish IL 24 retail shop at Marripalem instead of Bhavadevarapalli. Consequently a licence was issued to the petitioner on 08.08.2001 for establishment of an IL 24 shop at Marripalem. Petitioner's case is that, since he was issued a licence only after the first of August 2001, he was entitled to

remission of one third of the licence fee whereas the second respondent gave him the benefit of remission only of 1/6th i.e., only for a period of two months.

Under Rule 25(9), of the A.P. Indian Liquor and Foreign Liquor Rules, 1970, the annual licence fee for licenses granted between the first of June to 31st July is 5/6th of the annual licence fee and in cases licences are granted between the first of August and 30th September it is 2/3rd of the annual licence fee. While the second respondent treated it as a licence having been granted during the period from 1st June to 31st July and gave him remission of one sixth of the annual licence fee, the petitioner categorically stated that, since the licence was actually granted only on 7th of August, he was entitled for remission of one third of the annual licence fee as against the one sixth granted to him.

In their counter affidavit, Respondents would state that the department could not be faulted for failure of the petitioner to take immediate action consequent upon the writ petition being dismissed by this Court on 04.07.2001 and instead of establishing a shop, he had requested for shifting of the shop. Respondents would contend that the petitioner was not entitled to take advantage of his own delay to claim enhanced remission of licence fee.

The Government Pleader for prohibition would emphasise that, since the petitioner could very well have established the retail shop at the place originally allotted, he cannot take advantage of his own action in requesting for shifting of the shop to claim one third remission in the licence fee.

A perusal of the letter, addressed by the third respondent to the second respondent on 03.08.2001, would clearly show that the Person-Incharge of Bhavadevarapalli Grampanchayat had raised written objections about the establishment of IL 24 shops at Bhavadevarapalli village and that nobody was willing to seek a lease for IL 24 licences, thereat. In view of the fact that the grampanchayat and the villagers of Bhavadevarapalli had objected for establishment of IL 24 shop in their village, it cannot be said that the request to shift the shop was without justification.

If, indeed, the petitioner had been forced to seek shifting of the shop and it is only thereafter that he was granted a fresh licence on 07.08.2001, the contention of Sri K.L.N. Swamy, learned Counsel for the petitioner, that, since the licence was granted during the period 1st August to 30th September, the licenece fee which could be charged was only 2/3rd of the annual licence fee, cannot be said to be without merit. There are all matters, however, for the second respondent to examine and not for this Court to adjudicate in proceedings under Article 226 of the Constitution of India.

Ends of justice would be met, if the second respondent is directed to examine the matter afresh and pass appropriate orders in accordance with law, bearing in mind the facts noted and observations made hereinabove. The entire exercise in this regard shall be completed within a period of four months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

Date: 25.07.2007 RAMESH RANGANATHAN, J